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SUBJECT: UKRAINE: ELECTIONS PROCESS STILL BUMPY

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Classified By: Ambassador for reasons 1.4(a,b,d).

11. (C) Summary. Prime Minister Yanukovych and Party of Regions members are now openly talking about their election preparations and have told us that June 15 will be the last day the Rada is in session. The Rada must still acknowledge the resignations of at least another 72 members of the opposition, a process so far painfully dragged out by a bitter Speaker Moroz, in order to deprive the Rada of a quorum and give Yushchenko the constitutional and legal basis for pre-term elections as agreed to on May 27. At that point, according to Regions faction leader Bohatyreva, PM Yanukovych will announce on television June 15 that Regions considers the Rada to be no longer in session. However, Chairman of the Central Election Commission Shapoval and his deputy expressed concern that the new CEC was already deeply divided along political lines and that the legal basis for the elections was shaky at best; if elections went forward, it would have to be for political reasons. They also were worried about increased chances of voter fraud stemming from changes in the parliamentary election law.

12. (C) Comment. Now that Regions is also talking about elections, all three major parties seem agreed on going to the polls on September 30, but we will watch to see what actions they take to end this political crisis. A statement by Yanukovych that Regions believes that the Rada's plenary session is over would be an extremely positive step toward the final implementation of the May 27 deal. Concerns remain, however, that the opposition could fail in its effort to deprive the Rada of its quorum, in large part because the new election law could prevent the CEC from canceling the Our Ukraine party list. Further complicating matters would be a ruling by the appellate court that Our Ukraine does not have the right to annul its list because of objections from one of the original OU bloc members, Kinakh's Party of Industrialists and Entrepreneurs which joined the coalition in March before the crisis began. The result could be that the CEC may be forced to keep seating new MPs, dragging the process out even further. In the longer run, Shapoval's concerns about election fraud are serious and the process will need to be monitored closely. Given the distrust between political forces and how much is riding on the outcome of these elections, it will be important for the U.S. and international community to keep the pressure on to ensure that the commitment to clean elections not get lost in the political calculations. End summary and comment.

Yanukovych: A Straight Path to Elections

13. (C) At a June 12 meeting with the Ambassador and former Ambassador Pifer, PM Yanukovych appeared relaxed and confident that September elections would happen - as long as

the opposition carried through on its promise to have 151 Rada deputies resign and if the courts allowed the Central Election Commission to abolish the OU and BYuT election lists. He reiterated the importance of holding pre-term elections on a legal basis within the framework of Constitution as part of the May 27 agreement. In Yanukovych's view, all the other major obligations of the agreement had been fulfilled; what was needed was the resignation of 151 opposition deputies in accordance with the Rada's rules of order. Once that occurred, Article 82, Part 2 of the Constitution gave the President a legal basis upon which to call elections. As of June 12, 79 deputies had resigned; another 72 resignations were needed. Yanukovych repeated several times during the meeting that this was the responsibility of the opposition, not the coalition. He said that he understood some deputies did not want to resign, but that "this is a question of party discipline that is up to the opposition to enforce." According to his information, at least "50 OU deputies did not want to resign."

14. (C) Nevertheless, in Yanukovych's mind, the path to pre-term elections was clear. He said that he would suggest to the President that there be one final plenary meeting of the Rada on June 15. In his vision, all the deputies, including those who had resigned, plus the President and Prime Minister, would come to the Rada. The Rada would pass some final pieces of economic-related legislation and then the Rada plenary session would be closed to enable deputies to prepare for pre-term elections. Yanukovych was not sure whether Yushchenko would accept his proposal, but he stressed that this was a Party of Regions' proposal, he was not speaking for his coalition members, and that this had been announced publicly. If the resignation process was still ongoing, the Rada could always be called back into session at a later date to hear the rest of the list of resignations, Yanukovych added.

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15. (C) Yanukovych acknowledged that Speaker Moroz and others in the Rada did not want elections, but was confident that they would not interfere in the process - "completion of the agreement does not depend upon whether or not Moroz wants elections." Yanukovych also predicted that if the 151 deputies did not resign, then this would reflect badly on the President and that it was important that Yushchenko understand this. This would not be the fault of the coalition, but of the opposition. However, Yanukovych stressed, the opposition still had time. If not in June, then they could still resign in July. Yanukovych noted that during negotiations, he had sought to find other legal grounds to hold pre-term elections, but the President had insisted - and had been confident that he could fulfill his end of the compromise agreement.

...But Also a Procedural Issue

16. (C) According to Yanukovych, in addition to the issue of the resignations, the only remaining problem is the nullification of the electoral lists of the opposition parties - so that once deputies resign, they won't be replaced by the next names on the party lists. Yanukovych said that this was not a simple issue -- those on the list had rights. And, according to Yanukovych, at least 42 individuals had applied to the courts to protect those rights. Yanukovych acknowledged that OU and BYuT had held their party congresses and voted to nullify their lists, as required by law. However, Regions believes that these decisions alone were not a basis for the CEC to make a decision. In Yanukovych's view, this decision could only be made by the courts and that the CEC would not be able to abolish the lists if the district courts upheld the rights of those who had objected to the party decisions to nullify the lists. According to Yanukovych, the opposition parties could appeal these decisions to appellate courts, and if necessary,

appeal further to a higher administrative court. He believed that only after the court process is concluded would the CEC have the right to nullify the lists.

PM Still Looking for a Broad Coalition

17. (C) In spite of all the political turmoil, Yanukovych stressed that the government must continue working, especially on economic issues. This was especially true since public opinion polls had demonstrated that the majority of people were not in favor of early elections. In Yanukovych's mind, the best alternative would be for OU and Regions to join forces in a broad coalition. Yanukovych noted that the crisis had "made us much closer than we were in the spring" and that a broad coalition would be possible either with or without pre-term elections. And, in Yanukovych's view, a new broad coalition would result in the Socialists and Communists joining BYuT in opposition. Whatever the result of the next few days and the final push to implement the May 27 agreement, Yanukovych emphasized that he saw "no tragedy" coming. It was important to keep working every day. In his view, the coalition had fulfilled all of its obligations under the political compromise. Now it was up to the opposition and the President.

Bohatyрева: PM Will Announce End of Rada Friday

18. (C) Regions faction leader Raisa Bohatyрева on June 13 echoed Yanukovych's comments to the Ambassador that June 15 would be the last day Regions works in Rada plenary session and added some more specifics. She and a few other Regions MPs had written a short statement for Yanukovych to read Friday June 15 on television. The PM would announce that Regions was finished with Rada work and was now preparing for the elections. She and MP Borys Kolesnikov, a close Akhmetov ally, met with NSDC Secretary Plyushch on June 12 to tell him about the statement and to ask for presidential support for the Rada to work until Friday in order to pass a packet of legislation important to Regions. She said that this packet included: the CabMin's social-economic plan for 2007; the privatization program for 2007-2009; a law on commodity exchanges; a law on the government procurement system, which she said had been quite controversial; and a law on regional policy. Plyushch said it was unlikely that that Yushchenko would come to the Rada Friday or sign any new laws because the coalition had broken too many promises to the President, but Bohatyрева said they will go through with the plan without the President's assistance because if they did not stop work on Friday, they would have used up the last chance for a peaceful resolution to the crisis.

19. (C) Regarding the slow pace with which opposition MPs'

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resignations were being accepted by the Rada, Bohatyрева thought this would not be a major obstacle to fulfilling the agreement. She believed that the Rada could finish reading the names of those who had resigned by Friday June 15. In terms of the CEC's current inability to dissolve the OU party list, she thought that an appeal that is sitting with the appellate court right now could resolve this by ordering the CEC to cancel the party list. She said Regions would back the court decision and would not challenge it. Bohatyрева also said that she had asked Communist leader Symonenko to help pressure Moroz to accept defeat and close the Rada plenary. (Comment: Publicly and privately, other members of Regions have also begun to speak openly about upcoming elections. Kolesnikov gave a long interview to Dzerkalo Tyzhnya, in which he talked about party preparations for the campaign and putting together the party list. MP Yuriy Miroshnychenko told us that his party was now ready for the elections, bemoaning the fact that Regions was still fussing with details of fulfilling the May 27 agreement rather than preparing for the vote. End Comment.)

¶10. (C) New CEC Chairman Volodymyr Shapoval and his deputy Zhana Usenko-Chorna told Ambassador June 12 that the CEC was in an uncomfortable position and it was not yet clear how elections would play out. Shapoval expressed concern that the new CEC was very politicized with a very open division between the eight coalition-nominated commissioners and the seven presidential/opposition-nominated commissioners. He also said that he did not think all 15 commissioners believed that there would be a September 30 election. (Note: PM Yanukovych told the Ambassador that he wanted the President, Speaker and PM to hold a public session with the new CEC to pledge non-interference in their work of preparing the elections. Yanukovych made this proposal public June 13. End Note.)

¶11. (C) The two commissioners said they had main two concerns; the first was the shaky legal basis for the elections. They were unhappy that the date for the elections had been set before the Rada had actually lost its quorum (the basis for new elections agreed on by the President, PM, and Speaker on May 27). Moreover, in the current legal framework, it was not clear the Rada would actually lose the 151 MPs necessary to deprive the Rada of a quorum. The amended parliamentary election law (PEL), passed May 29, prohibited blocs and parties from canceling their party lists. This meant that while the CEC had already canceled BYuT's list, it could no longer cancel OU's, meaning that if OU MPs continue to resign the CEC might have to seat the next people on the list as new MPs. Thus, Shapoval argued, only a political decision could make the elections happen. If all sides honestly adhere to the May 27 agreement, the CEC will be able to organize the elections.

¶12. (C) Both Shapoval and Usenko-Chorna expressed concern that the newly amended PEL reintroduced provisions that had been removed after the second round of the 2004 presidential election that could increase the possibility of voter fraud. Their biggest worry was that the amended law tasked the State Tax Administration with updating the 2006 voter lists, with the assistance of the State Border Guard Service. Neither service had the capability to do this, and the result would be millions of people included on voter lists at multiple polling stations. A smaller problem will be the ban on absentee ballots, for the first time in independent Ukraine's history, which could discourage domestic observers from traveling to watch voting. Shapoval also said that at the local level, it would be very difficult to ensure the honesty of the poll commissioners. (Note. The law also removes the stringent requirements for using the mobile ballot box, a significant source of fraud in 2004, making it relatively easy to request a ballot be delivered to a voter's home. End note.)

¶13. (C) Comment. There is clearly a lot of tension surrounding the CEC. Although Usenko-Chorna said it was technically possible for new OU MPs to continue to resign as soon as they become MPs until the list is used up, new MPs, who might otherwise never have the chance to be a Rada deputy, might be less likely to want to resign. In addition, with the Rada moving at a snail's pace to announce the resignations of the 169 MPs who already submitted their letters, the process of continual resignations could take months. In the meantime, coalition members, including Yanukovych and Moroz, have been attacking the CEC publicly in the past few days, demanding that they start replacing the OU MPs with new parliamentarians and threatening to dissolve the CEC if it does not comply.

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¶14. (C) During a June 13 meeting with the Ambassador and former Ambassador Pifer, opposition leader Tymoshenko was hopeful that the compromise would hold and that elections would take place on September 30, but she was not 100% confident. In her view, elections remain the only way out of the political standoff. She was matter-of-fact about the outcome, noting only that either the opposition forces will get enough votes to form a government or the most votes will go to Regions, the Communists, and Vitrenko's radicals, and Yushchenko would cut a deal with Yanukovych to form an OU-Regions broad coalition. Tymoshenko obviously preferred the first outcome. She predicted that election fraud would be a huge problem, not surprisingly based in Donetsk, Luhansk and Crimea.

¶15. (C) Tymoshenko described Yanukovych as teetering back and forth on the question of pre-term elections. She said that he was under extreme pressure to oppose elections from the Kremlin, Socialist leader Moroz and Communist Party faction head Symonenko, as well as the two-thirds of the Regions faction who had not yet received promises of spots on the new party list from Yanukovych, Akhmetov, or Klyuev. In her view, Yanukovych wanted to prevent any splits in Regions or within the coalition prior to the elections. Akhmetov continues to be a positive force for elections within Regions. Like Shapoval, Tymoshenko argued that CEC action to cancel the OU party list was completely a political decision. Abolishing the OU party list would not be very difficult. In her view, if Regions wants this, then they can get it done in 15 minutes.

¶16. (C) With regard to the resignations, Tymoshenko said that 167 deputies had now written letters to Moroz confirming that they wrote their resignation letters themselves. Tymoshenko was aware of Yanukovych's proposal to hold a final Friday, June 15 Rada session. In Tymoshenko's view, the laws to be passed were routine; this was simply a way to prolong the outcome. According to Tymoshenko, this June 15 plan was not important and did not matter much because the opposition would not be able to go into the Rada and vote since they no longer have mandates.

Moroz - Fighting a Rear-Guard Action

¶17. (C) Privately in separate meetings with Ambassador and with former Ambassador Pifer on June 11, an angry, desperate Moroz ranted about Yushchenko's numerous violations of democracy and promised that God would judge the President. Moroz said that the quorum article could provide the legal basis for an election, "if" the opposition can really get to 151, but resigning is a slow process that will take time. If the Rada does lose its quorum, then the Socialists would agree to a September 30 election. Moroz said he did not understand Yushchenko's position because Regions would have even more seats in a new Rada. If OU wants a broad coalition, then there was no need for elections; SPU will leave the current coalition, allowing OU and Regions to unite now, and happily join the opposition. The "Mukacheve Clan", Moroz argued, was dictating the President's decisions, leading him to interfere in the courts and the prosecutor general's office.

¶18. (C) Despite his ranting and his continued fight against elections both publicly and privately, Moroz has begun to announce the resignations of MPs in line with the procedure for the opposition to resign and deprive the Rada of a quorum. On June 8, he announced the resignations of 28 OU MPs, and on June 12 the resignations of 50 BYuT MPs and one more OU MP. However, he said that these MPs seats should be filled immediately by others from the party list and that their resignations did not provide the "legal field" needed to hold early elections.

Democratic Bloc Still Not Done

¶19. (C) Press reports on June 12 indicated that the election bloc between People's Union Our Ukraine, People's Self-Defense (PSD), and Pravitsya was all but finalized. The bloc will be called "People's Self-Defense--Our Ukraine," and the spots on the list would be divided up: 54% Our Ukraine, 25% PSD, and 21% Pravitsya. In addition, the top five names on the list will be Lutsenko, OU head Kyrylenko, Defense Minister Hrytsenko, Foreign Minister Yatsenyuk, and probably MP Katerynychuk. Hrytsenko confirmed to Ambassador that he will be on the list, at the President's request, but he does

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not want to be a Rada Deputy. Instead, he plans to go back to the executive branch, presumably to DefMin if confirmed, after the election. However, on June 13, Pravitsya co-chair Tarasyuk said that his bloc objected to the division of the list, criticizing Lutsenko for being greedy, and the use of the name Our Ukraine. MP Katerynychuk, representing People's Self-Defense, told us that the press reports were premature, although he expected an agreement on June 19. With regard to the mention of his name as number 5 on the new list, Katerynychuk laughed, noting that this was a sure sign that he would not be included in the top five for the bloc.

¶20. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
Taylor